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No. 80-1525

In The

Supreme Court of the United States

OCTOBER TERM, 1980

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Petitioner,

v.

GENERAL RAILWAY SIGNAL COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Question 1

Whether there is any "conflict" with decisions of this Court as to the scope of District Court review where the parties stipulated to the contractual standard of review and the District Court actually applied the standard of review now urged by petitioner.

Question 2

Whether petitioner may assert that respondent relitigated an issue de novo following remand by the District Court when, in fact, respondent rested on the prior record and only petitioner introduced new evidence.

Question 3

Whether there is any reason to reconsider the long-established rule that the Statute of Limitations runs from the completion of a contractual disputes procedure finally deciding a contract claim rather than when the contractual dispute initially arose.

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-vs-

GENERAL RAILWAY SIGNAL COMPANY,

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent General Railway Signal Company ("GRS") requests that the writ of certiorari sought by petitioner Washington Metropolitan Area Transit Authority ("WMATA") be denied with double costs and appropriate damages. Where a petition is frivilous, inaccurate in material respects, as well as prolix, a respondent should not be without remedy.

COUNTER-STATEMENT OF THE CASE

The issue in this case is whether respondent General Railway Signal Company ("GRS") was entitled to interest, pursuant to D.C. Code §15-109, on two contract claims against WMATA initially litigated through a contractual disputes procedure. WMATA's convoluted petition obscures the nature of this controversy as well as the grounds for the rulings of the courts below. It is therefore appropriate to state plainly what occurred.

In February, 1971, the parties entered into an agreement whereby GRS was to provide engineering services, equipment and labor to modify signal and communication facilities at the Union Station railroad yard in Washington, D. C. The contract gave WMATA a broad power to change the work and to require GRS to perform

in accordance with the resulting change order. The contract also authorized WMATA to resolve any disagreement concerning the work in its favor and to direct GRS to comply with WMATA's dictates. To be paid for its additional costs, GRS had to submit a claim through a disputes procedure for decision on papers by WMATA's Contracting Officer. If the Contracting Officer denied the claim, GRS could "appeal" and obtain an evidentiary hearing through a WMATA Board. (See WMATA Petition 2 n. 1.)

In December, 1971, disputes arose as to whether the contract required GRS to install a particular signal feature (a "call-on") in certain portions of the railroad yard and as to whether new

double-break circuitry was required in portions of the yard not otherwise modified. Although GRS believed that WMATA's directions exceeded the contract requirements, and therefore were constructive changes imposing extra work, GRS had to perform and seek payment through the disputes procedure.

After the extra work was completed, GRS demanded payment on the double-break claim by August, 1973 and on the call-on claim by December, 1973.

These contract claims were short and straightforward, requiring only an interpretation of a few contract provisions and the related drawings. No disputed issues of fact were presented. There was no reason why these claims should not have been decided promptly.

The claims were initially submitted to WMATA's Resident Engineer in mid-1972. After an unexplained delay of one year, the Resident Engineer denied the claims in three-sentence letters. GRS then submitted its claims to WMATA's Contracting Officer and waited months for his action.

After the adverse decisions were finally issued, GRS appealed to the Board of Contract Appeals. Before the hearing, the parties stipulated damages, leaving for decision only the question of contract interpretation. The stipulation recited that GRS was claiming interest, while WMATA denied that any interest was allowable on the claims.

WMATA's suggestion that the claim for interest was not raised before the

Board is flatly inaccurate. Although GRS had planned to amend its complaints at the start of the hearing (WMATA Appendix 81-82), an amendment became unnecessary when the parties instead entered into their stipulation setting forth the claim for interest. WMATA presented the stipulation to the Board as the first order of business, noting that the interest question "will be briefed by the parties...".

It is important to clarify the interest question as raised before the Board at this first Step. In Granite Construction Co. Eng. BCA No. 3561, 76-1 BCA ¶ 11,748, the Board had disallowed interest on a contract claim against WMATA by adopting the special rules applied by the Board and the

Court of Claims in contract claims against the United States and its federal agencies.

Under these special rules, interest is allowed on contract claims against the United States and its agencies only to the extent of costs actually incurred by borrowings specifically allocable to the performance of the extra work. Unlike ordinary commercial law, these special rules require evidence of interest costs.

These special rules, however, arise from the sovereign immunity of the United States, and not from any contract language or any procedures inherent to the Board. Because WMATA is not a federal agency, and is not the beneficiary of a similar bar against the payment of

interest, GRS contended to the Board that the commercial law of the District of Columbia determined the allowability of interest on these contract claims and therefore Granite Construction should be reconsidered. (See WMATA App. 62-64, 67-70.) The Board, however, adhered to its decision in Granite Construction (WMATA App. 30-31) and denied interest on the claims.

GRS therefore filed its complaint in the District Court (WMATA App. 73-78) and, in response to WMATA's motion to dismiss, GRS cross-moved for summary judgment. Contrary to WMATA's tortured description of the positions of the parties before the District Court (WMATA Br. 6-7), there was no dispute regarding the standard of review applicable in the

District Court. GRS contended that the issue presented was one of law: whether the standards of D.C. Code §15-109 applied.

The District Court rejected WMATA's contention that federal law applied, holding that "[t]hat doctrine...is based on the sovereign immunity of the United States...Inasmuch as WMATA shares the immunity of neither the federal government nor the three signatories to the WMATA Compact, the Board of Contract Appeals erroneously relied on the immunity doctrine to deny plaintiffs' claim." (WMATA App. 12-13.) The District Court agreed with GRS that the law of the District of Columbia was applicable and, noting that such law required the consideration of certain discretionary

factors (WMATA App. 13), the Court remanded the matter to the Board for further proceedings.

WMATA's description of the District Court's opinion as recharacterizing a request for judicial review as "an implied breach of contract claim" (WMATA Petition 8) makes no sense under these circumstances. The Court simply held that the wrong legal standard had been applied by the Board in denying interest and sent the matter back to the Board for further proceedings.

The Court was required to respond to WMATA's contention that there was no relevant interest statute in the District of Columbia because D.C. Code §15-109 authorizes recovery of interest "in an action to recover damages for breach of

contract" whereas WMATA contended that this contract claim had been litigated "under the contract." In effect, the Court held that a change by WMATA of the contract terms, giving rise to a claim for additional compensation, was a breach of contract claim for purposes of the interest statute, whether or not initially litigated in a contractual disputes procedure.

In the second Board hearing, GRS introduced no additional evidence and, instead, rested on the record. GRS submitted that the record warranted the allowance of interest based on the factors applicable to D.C. Code §15-109. WMATA produced a witness who attempted to justify and explain the extensive delay in the handling of the claims by

GRS. WMATA's suggestion that the Court or the Board allowed GRS to relitigate its claim for interest de novo is therefore factually inaccurate. Finding WMATA's evidence wholly unpersuasive, the Board found that there "was too much delay in processing the claims from which the appeals arose."

Although adopting all the factual findings by the Board, WMATA's General Manager struck out the concluding paragraph as "inconsistent with local law." The General Manager relied upon a clearly inapplicable case dealing with whether delay in the dispute procedure made the administrative remedy so untimely as to be nonexistent.

At that point, GRS was forced to return to the District Court.

The District Court promptly overturned the arbitrary action of WMATA's General Manager, reinstated the conclusion of the Board of Contract Appeals, and held that under the standards of D.C. Code §15-109 GRS was entitled to interest upon its claims "from the time, after completion of the work, when the plaintiff first requested payment until defendant made final payment, plus interest in the statutory amount on the sum of the foregoing interest from the time of final payment, January 17, 1977, until paid." (WMATA App. 9.)

Cutting through the prolix arguments made by WMATA, the Court of Appeals affirmed the judgment "on the basis of the opinions and orders of the District Court..."

SUMMARY OF ARGUMENT

Apart from the fact that no issues of public importance are raised by the petition, and that the Court of Appeals found petitioner's arguments to warrant no more than a one-paragraph per curiam decision, the principal issues petitioner seeks to raise are not in fact presented on this record. Upon stipulation by both parties, the District Court applied the standard of review that WMATA urges. The "conflict" discussed at pages 11-13 of the petition is non-existent. Because only WMATA introduced evidence at the second Board hearing, the assertion that GRS relitigated the interest claim is a bold misrepresentation of fact. Finally, there is long-standing authority for the

proposition that the statute of limitations runs from the completion of a contractual disputes procedure. Semantical confusion notwithstanding, it is not in any manner inconsistent for the Court to hold that this dispute, litigated pursuant to a contractual disputes procedure, was in the nature of a claim for breach of contract for purposes of the District of Columbia interest statutes.

REASONS WHY THE WRIT SHOULD BE DENIED

Neither the decision below nor the record raises the Questions Presented in the petition.

WMATA's petition presents no legal issues deserving of further review. This controversy, involving only $40,000 of interest on two uncomplicated contract claims, has been litigated to death. All of WMATA's current arguments were heard and promptly rejected by the Court of Appeals in a brief per curiam decision.

The main issue decided by the District Court, that the allowability of interest on claims against WMATA is to be determined by local law rather than the special substantive rules applicable

to claims against the United States, is no longer disputed by WMATA.

The procedural issues WMATA now raises are not presented upon this record. WMATA has mischaracterized the procedural history and factual nature of this case, omitting significant facts and confusing the grounds for the rulings of the courts below.

A. The alleged "conflict" is nonexistent

Contrary to WMATA's arguments, there was never any controversy concerning the standard of review applicable in the District Court. GRS stipulated that the contractual standard applied.

WMATA cannot honestly believe that the District Court departed from this standard.

In its first opinion, that Court held that the wrong substantive law had been used by the WMATA Board to deny interest on GRS's contract claims. After this matter had been remanded to the Board, and the Board had ruled in favor of GRS that there had been unreasonable delay by WMATA, WMATA's General Manager arrogantly departed from the law of the case mandated by the District Court. In its second opinion, the District Court was thus forced to rule that it, rather than WMATA, determined the applicable law (WMATA App. 7-8) and then the Court found that WMATA's decision (assuming it could be viewed as a factual finding) was "not supported by substantial evidence."

The District Court clearly applied the appropriate standard of review. WMATA's tortured attempts to demonstrate a conflict are contrary to fact.

B. Because Only WMATA Presented Evidence in the Second Board Hearing, Its "Second Bite" Argument Is Unvarnished Nonsense.

On the second point presented in its petition, WMATA gets lost in the fog of its own words. The issues raised have no relationship to fact.

The need for further proceedings before the Board cannot be blamed on GRS or the District Court. The remand was made necessary because WMATA adopted an erroneous substantive rule of law in denying interest on GRS' meritorious claims. The burden was placed upon GRS

to proceed to the District Court to overturn WMATA's erroneous action.

More importantly, the record does not support WMATA's assertion that the District Court "allowed [GRS] a second evidentiary bite at the interest apple." (WMATA Br. 16.) After the District Court remanded the proceedings to the Board, GRS rested upon the original administrative record. (See Appendix to Briefs in the Court of Appeals 960-973.) WMATA, seeking to excuse the delay apparent in the record, produced the only witness and offered the only documentary evidence.

Because the misrepresentation inherent in WMATA's argument was brought to its attention in the Court of Appeals, the continued presentation of this fallacious point lacks excuse.

C. WMATA's Statute of Limitations Argument Is Contrary To Well-Established Law.

WMATA finds "incomprehensible" the unanimous rulings of the courts below that the statute of limitations runs from WMATA's final decision rather than from the commencement of the disputes procedure. WMATA's dismay notwithstanding, the rulings below are well established in law and sound policy. Conn v. United States, 366 F.2d 1019, 1021-22 (Ct. Cl. 1966); Crown Coat Front Co. v. United States, 386 U.S. 503, 521-22 (1967).

WMATA's argument rests only on a self-created semantical confusion. This confusion disappears when the issues and underlying policies are clarified. The

above accrual rule applies to disputes litigated pursuant to a contractual disputes procedure (sometimes called "disputes-clause claims") and not to certain claims outside the jurisdiction of the disputes procedure (sometimes called "breach claims"). See United States v. Utah Construction Co., 384 U.S. 394, 403-418 (1966); Crown Coat Front Co. v. United States, supra, 386 U.S. at 509, 522. In this context, the term "pure breach of contract claim" is an imprecise description for the conclusion that certain claims must be brought directly to court because the relief requested is not available through the contractual disputes procedure.

Here, there is no question that GRS was obligated to present its contract

claims through the available disputes mechanisms. The relief requested and the nature of these claims made resort to such procedures mandatory and appropriate. Accordingly, the well-established accrual rules apply.

It makes no sense to suggest that the allowability of interest should have been brought to court before a final decision was issued on the underlying claim. WMATA's position makes no practical sense and the summary rejection of this argument by the courts below was correct.

WMATA purports to find inconsistent the holding that these claims are disputes-clause claims for accrual purposes but breach of contract claims for application of D.C. Code §15-109. These expressions,

however, arise from distinguishable contexts and serve different purposes.

Whether the courts below properly held that these contract claims may be viewed as a breach of contract claim for purposes of applying D.C. Code §15-109 to allow interest on the claim, depends upon the meaning and purpose of the interest statute. The D.C. statutes make no distinction between contract claims litigated in court and contract claims litigated pursuant to other disputes procedures. No sensible reason supports any such distinction. Where a party seeks monetary damages because the other party departs from the terms of a contract, in ordinary language that departure constitutes a breach of contract whether or not a disputes procedure is

created by the contract. To hold otherwise would unreasonably limit the full remedy available for breach of contract whenever a nonjudicial disputes procedure (e.g. arbitration) is established.

Here, GRS was forced by WMATA to provide services and equipment beyond the terms of the contract. By its delay and erroneous decisions on the resulting claims, WMATA retained money owing to GRS. An award of interest was virtually mandated to provide minimal compensation to GRS. By a series of frivilous appeals and motions, based largely upon mischaracterizations of fact and arguments not exemplifying "accuracy, brevity and clearness" (Rule 21.5), WMATA has unduly extended this litigation.

CONCLUSION

It is respectfully suggested that an award of double costs (Rule 21.5 and Rule 50.7) and appropriate damages (Rule 49.2) is warranted for the reasons set out above.

Dated: May 8, 1981

Respectfully submitted,

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